

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 17130 |
| [Redacted], |) | |
| |) | DECISION |
| Petitioner. |) | |
| _____ |) | |

On January 11, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1996 and 1997 in the total amount of \$326.

On March 15, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers were not able to attend a hearing, so they provided additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayers sold real property in Idaho on an installment basis in 1995. The Bureau researched the Tax Commission's records and found the taxpayers did file an Idaho individual income tax return for the taxable year 1995, but failed to file returns for 1996 and 1997, the years of the installment payments. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayers a letter asking them about the sale of the Idaho property and their requirement to file Idaho income tax returns. The taxpayers responded with copies of their federal and state income tax returns they filed for those years. The Bureau reviewed the returns and determined the taxpayers were required to file Idaho income tax returns for 1996 and 1997. The

Bureau prepared Idaho income tax returns for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating the gains were reported on their [Redacted] returns. They also said it was their understanding the years were closed to adjustments.

The matter was referred for administrative review and the Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers provided additional information, which the Tax Commission considered in its final decision.

The taxpayers stated they relied on their Certified Public Accountant to prepare the necessary income tax returns for the sale of the ranch in Idaho. They believed he was competent and reliable. They stated they paid tax on the sale of the ranch to the State of [Redacted]. The taxpayers stated they did not receive the interest income that was included in the deficiency. Furthermore, the Tax Commission was far past a reasonable and prudent time for addressing this issue.

The Idaho Code is clear in section 63-3026A(3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for the years in question was \$2,500. Therefore, if the taxpayers received installment payments in excess of \$2,500, they were required to file an Idaho income tax return.

The taxpayers' federal income tax returns showed the taxpayers received \$40,355 on the sale in 1996 and \$16,135 in 1997. Both amounts exceeded the filing requirements of Idaho Code section 63-3030; therefore, the taxpayers were required to file Idaho income tax returns. The

returns the Bureau prepared for the taxpayers started with the gain on the sale (Idaho source income), subtracted the Idaho capital gains deduction (the property was held over 18 months), and prorated the taxpayers' standard deduction and exemptions (Idaho Code section 63-3026A). The Bureau also added interest income to the taxpayers' 1996 return.

The taxpayers did not argue that Idaho was not entitled to tax the gain on the sale of the property. They admitted their accountant made a mistake in not filing the returns. However, the taxpayers stated they did not receive any interest on the installment payments on the sale of the property.

Internal Revenue Code (IRC) section 483 states that in the case of any payment under any contract for the sale or exchange of any property there shall be treated as interest a portion of the total unstated interest under such contract, which is to be allocated to each payment. In other words, any sale made on the installment basis is to have interest associated with it, whether it be stated or unstated. The taxpayers claimed they did not receive any interest; nevertheless, because of the nature of an installment sale, interest should have been part of the sales contract. Therefore, the Tax Commission upholds the determination the taxpayers received interest income.

However, IRC section 483 states that when interest is unstated, a portion of each payment is to be allocated as interest. The Bureau did not make that allocation. Rather, the Bureau computed an interest amount and added it to the total payments the taxpayers received in 1996. In effect, the Bureau added income to the taxpayers' Idaho taxable income that they did not receive. Therefore, the Tax Commission corrected the taxpayers' taxable income by allocating part of the installment payments as interest income.

The taxpayers argued the time limit for this matter was far past a reasonable and prudent time for assessing a tax. They stated they relied on their tax preparer to prepare the necessary returns. They were not aware they were required to report the installment payments to Idaho.

The responsibility for filing individual income tax returns lies with the taxpayer. Each taxpayer has the responsibility to become familiar with the taxing schemes of the states where he has taxable activities. In this case, the taxpayers' accountant should have known the installment payments on sale of property generally requires the filing of an income tax return for the state in which the property is located. In fact, the accountant prepared and the taxpayers filed an Idaho return for the year the property sold. Why the installment years' returns were not prepared is unknown.

In fulfilling its charge and duties (Idaho Code section 63-105), the Tax Commission makes every effort to review and analyze all the information it receives in a timely manner. Ideally, the Tax Commission would like to notify taxpayers of any tax deficiency shortly after the end of the filing season. However, with the volume of information, the timing of receiving the information, the available technology, and the available staff, it is just not possible. Regardless, the statute of limitations in this case had not expired because the statute does not start until a return is file. (Idaho Code section 63-3068.) Therefore, the Tax Commission was well within the time limit for sending a Notice of Deficiency Determination.

WHEREFORE, the Notice of Deficiency Determination dated January 11, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|----------------|-----------------|--------------|
| 1996 | \$147 | \$37 | \$72 | \$256 |
| 1997 | 46 | 12 | 19 | <u>77</u> |
| | | | TOTAL DUE | <u>\$333</u> |

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]